S.B. CRIMINAL MISC. SECOND BAIL APPLICATION NO.3156/2006
(Khetpal Vs. State of Rajasthan)

Date of Order :: 30.08.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Vinod Bhadu for the petitioner
Mr.B.L.Bhati, Public Prosecutor

This is a second bail application under Section 438 of the Code of Criminal Procedure (Cr.P.C). The petitioner is accused of offences under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code and the accusation against the petitioner has been of putting forward some other person in place of his dead father Chunnilal and obtaining loan from the Bank.

The bail application moved by the petitioner was rejected on 18.05.2006 by the Sessions Judge, Hanumangarh. It was submitted before the learned Sessions Judge that the petitioner had already deposited the disputed amount with the Bank but the learned Sessions Judge was of opinion that the petitioner was required for investigation and merely because he had allegedly deposited the amount of loan, he was not entitled for the benefit of anticipatory bail under Section 438 Cr.P.C.; and that it cannot be said that the petitioner was unnecessarily being harassed or was not required for investigation. A bail application under Section 438 Cr.P.C. was thereafter moved to this Court by the petitioner; and the learned counsel then appearing for the petitioner; after attempting to argue the matter for some time submitted that the petitioner would stand advised not to press the bail

application at that stage and to move the application at future appropriate stage. Accordingly, permission was granted and the bail application was dismissed as not pressed on 15.06.2006.

Thereafter, the present bail application has been moved on 07.07.2006 on the basis of the same order passed by the learned Sessions Judge, Hanumangarh on 18.05.2006.

Learned counsel now appearing for the petitioner submits that no recovery is due from the petitioner; that the amount in question has already been deposited by the petitioner and he is ready to co-operate with the investigation and would not be leaving the jurisdiction of the Police Station concerned; that the Bank has already issued No Objection Certificate; and even if there was some mistake, the same has already been rectified and particularly in view of the fact that no recovery is due, the petitioner deserves to be extended benefit of Section 438 Cr.P.C.

Learned Public Prosecutor has opposed the bail application with the submissions that accusation against the petitioner is serious in nature and if the petitioner contends that he has deposited the amount of loan, the same does not inure to the benefit of the petitioner and is rather indicative prima facie of the fact that the accused was involved in commission of offence.

Having given thoughtful consideration to the submissions made by learned counsel now appearing for the petitioner and learned Public Prosecutor, this Court is clearly of opinion that this second bail application under Section 438 Cr.P.C. cannot be allowed and deserves to be rejected as there has been no change in the circumstances since after first bail application was dismissed as not pressed by this Court on 15.06.2006 and in fact it appears that the petitioner

has thereafter not even approached the learned Sessions Judge with a fresh bail application.

Be that as it may, the fact further remains that accusations against the petitioner are of serious nature and even from the submissions sought to be made on behalf of the petitioner now, it cannot be said that no case whatsoever is prima facie made out against the petitioner or that there is no justification for proceeding against the petitioner.

In this view of the matter, there appears no justification for extending benefit of Section 438 Cr.P.C to the petitioner. The second bail application is, therefore, rejected.

(DINESH MAHESHWARI), J.

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